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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-572

NANCY L. FARHA, et al., BILLY LINKER,
Petitioners,

vs.

UNIFIED SCHOOL DISTRICT NO. 259,
WICHITA, KANSAS, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR RESPONDENT SCHOOL DISTRICT IN OPPOSITION

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OPINIONS BELOW

The opinion of the District Court (Appendix to Petition, pp. A4-A32) is reported at 344 F.Supp. 1187. The *per curiam* opinion of the Court of Appeals for the Tenth Circuit was not published but is set forth in full in the Appendix to the Petition (pp. A1-A4).

JURISDICTION

This action was commenced as two separate cases in the District Court of Sedgwick County, Kansas, which were thereafter removed to and consolidated in the United

States District Court for the District of Kansas. Removal was had pursuant to 28 U.S.C. § 1443(2). Defendant Richardson was thereafter joined as a necessary party under Rule 19 of the Federal Rules of Civil Procedure. The *per curiam* opinion of the Court of Appeals for the Tenth Circuit, affirming the judgment of the District Court in all respects, was entered on May 31, 1973. Petitioners did not seek a rehearing and now seek to invoke this Court's jurisdiction under 28 U.S.C. § 1254.

QUESTIONS PRESENTED

A brief analysis of the four questions presented in the Petition is necessary in order to disclose the grounds why this cause should not be reviewed by this Court. The respondent school district finds that each of the first three questions in the Petition contains erroneous assumptions and confusing references to the law which must be corrected before the merits of the Petition can be reviewed. In addition, the petitioners have omitted at least three additional questions which must be resolved in their favor if the writ is granted and they are to prevail on the merits.

Question #1 in the Petition reads as follows:

> 1. From what sources do federal or state administrators acting alone or in consort, in supervising the statutory duties of citizens as are limited by particular state statutes,[1] [2] derive the discretionary power to provide methods by which certain selected citizens may be forced under color of law, to exceed the nature and extent of the performance of their statutory duties, as may have been administratively interpreted and enlarged by such assumed discretionary power of the said administrators? (Petition, pp. 2-3, footnotes omitted.)

When read with the footnotes, this question is apparently directed to the issue of whether Kansas school districts have authority under state law to require students between the ages of 7 and 16 to attend school for more than 6 hours per day and, if they do not have such authority, whether the time spent by students in transit (*i.e.*, to and from schools to which they are bused under the desegregation plan) should be considered as part of the school day which is so limited in its length by the compulsory attendance law. K.S.A. 72-1106; 72-1111 (as set out in part in footnotes 1 and 2 to the Petition).

Since Question #1 does, in fact, raise an issue of state law, it should be restated as follows:

> 1. Does the statutory definition of a school day in Kansas prohibit the respondent school district from reassigning and transporting elementary school pupils (grades 1-6) for the purpose of desegregation in accordance with the requirements asserted by the Department of Health, Education and Welfare as a prerequisite to the continued receipt of federal funds under the provisions of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, et seq., and regulations promulgated thereunder, 45 CFR Part 80?

Question #2 of the Petition reads as follows:

> 2. From what sources is the administrative power derived which allows a Kansas school board, defined under Kansas law as a "quasi-municipal" body[3] and strictly limited in applying those powers granted to it by the Kansas legislature,[4] by some administratively discretionary method, to exact extra duty from certain selected citizens and thus effectively establish a form of "penal servitude" as to those citizens so selected? (Petition, p. 3, footnotes omitted.)

This question is apparently intended to ask whether those pupils who have been reassigned and transported for the purpose of desegregation are being subjected to the performance of an "extra duty" for the state which constitutes "penal servitude". By inference from the authorities cited in Question #1, the petitioners would define "extra duty" as the time spent travelling to and from school which exceeds the sum of the minimum length for a school day prescribed by statute and the time spent by their children in transit if they were assigned to the schools closest to their homes.

Under this definition of "extra duty", "penal servitude" exists only to the extent that the desegregation plan requires some pupils to spend more time travelling to school than others. Question #2 raises two interlocking issues: whether the respondent school district has a duty under state or federal law to assign all pupils to schools equidistant from their homes and, if such a duty exists, whether it is permissible to select certain students on the basis of their race and the racial composition of their schools for reassignment to other schools, which are located farther from their homes, in order to achieve desegregation. Thus, while the existence of an "extra duty" is contingent in part upon the definition of a school day under Kansas law, Question #2 appears to address itself primarily to the impact of the plan on the constitutional rights of the children of the petitioners. But, at the same time, the general administrative powers of the respondent school district are brought into question:

> 2. Does the respondent school district have an obligation under state or federal law to assign pupils to schools equal distances from their homes and, if so, does the deviation of the desegregation plan from such an assignment system for the purpose of desegregation

> under the Civil Rights Act of 1964 constitute a violation of the Thirteenth or Fourteenth Amendment rights of petitioners' children, who were selected at random and required to attend an elementary school other than the one closest to home for a period of one school year under the terms of the plan?

Petitioners state their last two questions in the following form:

> 3. May a state (Kansas) school board under color of law use discretionary administrative power to effectively exempt any group or class of citizens from the provisions of Title 42 U.S.C. 1981[5] or be allowed to use administrative discretion in violating Kansas Constitutional restrictions[6] by the creation of special immunities to certain classes?
>
> 4. In the event that all of the necessary discretionary powers are determined to be available to local (Kansas) school boards to determine that certain classes or persons will not be bused away from their neighborhood schools and that others shall be so bused on an involuntary basis are not those so required to be bused being subjected to an illegal "penal servitude" in violation of their civil rights? (Petition, p. 4, footnotes omitted.)

Question #3 assumes that a violation of 42 U.S.C. 1981 and/or the Kansas Constitution occurred with the implementation of the desegregation plan. The "color of law" under which the respondent school district is alleged to have acted is not stated. The identity of the class alleged to be "exempt" from 42 U.S.C. 1981 or the recipient of a special immunity is unclear. On the presumption that Question #3 is a variation on the theme of "extra duty"

and "penal servitude", respondent school district asks that it be clarified in the following manner:

> 3. Does the respondent school district have an obligation under state law to assign pupils to schools equal distances from their homes and, if so, does the deviation of the desegregation plan from such assignment system for the purpose of desegregation under the Civil Rights Act of 1964 constitute a violation of Article Two of the Bill of Rights of the Constitution of the State of Kansas or 42 U.S.C. 1981?

Question #4 simply asks whether the desegregation plan violates federal law. It is presumed that the federal law referred to in Question #4 consists of the 13th and 14th Amendments and legislation passed by Congress thereunder. Question #4 fails to make any reference whatever to the federal law under which the respondent school district was required to adopt the desegregation plan but the constitutionality of its action obviously must be tested in this context. Question #4 need not be restated.

Respondent would add the following questions:

> 5. Does Kansas law specifically allow the adoption of such desegregation plans by school districts as may be necessary for the continuation of federal funding to such districts under the Civil Rights Act of 1964?

> 6. Regardless of the provisions for such action under state law, was the adoption and implementation of the desegregation plan both justified and required by the Civil Rights Act of 1964 and the school desegregation decisions of this Court under the Fourteenth Amendment?

> 7. Is the participation of the petitioners' children in the desegregation plan unreasonable in view of the requirements of the Fourteenth Amendment?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article 6—EDUCATION—of the Constitution of the State of Kansas, Section 5:

> Section 5. *Local public schools.* Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards. When authorized by law, such boards may make and carry out agreements for co-operative operation and administration of educational programs under the general supervision of the state board of education, but such agreements shall be subject to limitation, change or termination by the legislature. (K.S.A., Constitutions Volume.)

Kansas Statutes Annotated 72-8201:

Organization Order for Unified School Districts.

. . .

Each unified district shall be designated by the name and style of "unified school district No. ...." . . ., and by such name may sue and be sued, execute contracts and hold such real and personal property as it may require [acquire]. Every unified district shall possess the usual powers of a corporation for public purposes. (K.S.A. 72-8201.)

Kansas Statutes Annotated 72-7901:

Status of boards of education of unified school districts. The governing body of a unified school district is and shall be a board of education composed of six (6) members, except as is specifically otherwise provided in this act. . . . (K.S.A. 72-7901.)

Kansas Statutes Annotated 72-8205:

Boards of Education; meeting times; quorum; general powers; legal counsel for officers and employees.

. . .

Except as otherwise provided in the unification acts the board shall have and may exercise the same powers and authorities as were immediately prior to this act conferred uniformly upon boards of education in cities of the first class, and, in addition thereto, the powers and authority expressly conferred by law. . . . (K.S.A. 72-8205.)

Kansas Statutes Annotated 72-1107:

Age of children attending school.

Subject to such regulations as the governing body of any school district may prescribe: (a) Any child who will attain the age of six (6) years on or before the first day of September of any school year shall be eligible to attend the elementary grades in the school district of his residence. . . . (K.S.A. 72-1107.)

K.S.A. 72-1106 and K.S.A. 72-1111 are reproduced in the Petition (pp. 2-3).

Kansas Statutes Annotated 72-8302:

Authorization to furnish transportation of students; requirement of transportation in certain cases. The board of education of any school district may provide or furnish transportation for students to or from any school of the school district. (K.S.A. 72-8302.)

Kansas Statutes Annotated 72-8301:

Definitions.

. . .

(c) The words "provide or furnish transportation" in addition to their ordinary meaning shall mean and include the right of a school district to: (1) Purchase, operate and maintain public school buses; (2) contract, lease or hire buses for the transportation of students and school personnel; and (3) reimburse persons who furnish transportation to students or school personnel in privately owned motor vehicles. . . . (K.S.A. 72-8301.)

Kansas Statutes Annotated 72-6201:

Federal fund applications by school districts and community junior colleges; use of federal funds. The board of education of any school district . . . may make and file applications for federal funds appropriated and made available for school purposes by federal law. Any school district . . . may receive from the federal government, or any of its agencies, any funds made available under existing law, rules or regulations, or that may hereafter be made available, for any and all school purposes. Any such board may expend the same for said purposes in accordance with the law, and the rules, regulations and requirements under which such funds are made available and such expenditures may be made even though the same were not included in the budget for the period in which such expenditures are made. (K.S.A. 72-6201.)

Title 42 U.S.C. 1981 and Article Two of the Kansas Bill of Rights are reproduced in the Petition (p. 4).

Thirteenth Amendment to the United States Constitution:

§ 1. *Prohibition.* Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

§ 2. *Enforcement of amendment.* Congress shall have power to enforce this article by appropriate legislation.

Fourteenth Amendment to the United States Constitution:

§ 1. *Citizenship; privileges or immunities; due process clause.* All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The present litigation pertains solely to the legality of the desegregation plan under which the elementary schools (grades K through 6) in the respondent school district have been operating since the opening of the 1971-72 school year.

The desegregation plan was adopted by the board of education of the respondent school district on May 17, 1971, after several months of intensive negotiations with officials of the Department of Health, Education and Welfare with regard to the action which the board was required to take

in order to achieve compliance with the Civil Rights Act of 1964.

Prior to these negotiations, a federal hearing examiner had issued an Initial Decision in Title VI proceedings within HEW wherein he found that the respondent was operating a dual system of schools on the basis of race at the elementary level in violation of the Civil Rights Act of 1964. These proceedings were commenced on February 18, 1970. The hearing examiner's opinion was dated February 26, 1971.

On July 20, 1971, HEW announced that the desegregation plan adopted by the respondent was acceptable under Title VI of the Civil Rights Act. On August 19, 1971, a few days before the suits consolidated herein were filed, HEW formally lifted the deferral of federal funds to the Wichita school system which had been in effect for nearly two and one-half years.

Under the desegregation plan approved by HEW and challenged by the parents of white children in this proceeding, 2,925 black pupils and 1,318 white pupils from a total elementary school population of 33,750 pupils were selected by lottery for reassignment to 71 of the 82 elementary schools operating within the school system at the opening of the 1971-72 school year. In other words, a total of 12% of the pupils attending elementary school in the Wichita system were assigned to new schools which were, in most cases, located further from their homes than the schools they previously attended.

As a result of the implementation of the desegregation plan, each of the elementary schools in the system now reflects a ratio of black pupils to white pupils which is not less than 50 percent nor more than 150 percent of the ratio of black elementary pupils to white elementary pupils in

the system as a whole. The 11 schools deferred from the lottery provisions of the plan for the 1971-72 school year were already within this ratio as the result of residential integration. Since the implementation of the plan, the number of schools so deferred has increased and the number of pupils reassigned by lottery has decreased.

Free bus transportation is made available to each pupil reassigned under the plan. The average daily travel time spent by pupils transported by bus to their new schools was 37 minutes each way during the first year. Before the opening of the 1972-73 school year, the respondent school district decided to limit the period of compulsory reassignment for each pupil randomly selected under the plan to one year. As a result, petitioners' children are no longer required to attend the schools to which they were assigned for the 1971-72 school year and are free to return to their neighborhood schools if they desire to do so.

ARGUMENT

The petitioners have cited no decision of any other court of appeals which is in conflict with the decision of the Court of Appeals of the Tenth Circuit in this case. No authority cited by petitioners gives any indication that the Court of Appeals or the district court decided an important question of Kansas law in conflict with a Kansas case or statute. Each of the questions involving federal law has already been resolved by this Court in prior desegregation cases. When the questions presented for review by petitioners are briefly analyzed in the context of these precedents, it becomes immediately apparent that the decision of the Court of Appeals raises no special or important reason for this Court to grant a review on writ of certiorari in this case.

I. The Petition Cites No Federal Court Decisions Which Are in Conflict with the Decision of the Court of Appeals in This Case.

At the beginning of the very brief argument contained in their Petition, petitioners contend that the decision of the Court of Appeals in this case conflicts with *McDaniel* v. *Barresi*, 402 U.S. 39, 28 L.Ed. 2d 582, because the latter case holds that "Federal administrators are precluded from insisting on cross-busing in school cases" (Petition, p. 8). *Barresi* holds no such thing. Federal administrators were not even named as defendants in that case. There, as here, it was the scope of the school district's authority to disestablish a dual school system (and not the issue of its duty to do so) which was the subject of the litigation.

Although the involvement of HEW officials in negotiations concerning the desegregation plan was acknowl-

edged in a footnote in the *Barresi* opinion, the decision deals with the issue of whether a desegregation plan voluntarily adopted by a local school board (as in the present case) can be enjoined on the ground that it violates the Equal Protection clause of the Fourteenth Amendment "by treating students differently because of their race" and Title IV of the Civil Rights Act of 1964 by requiring "the transportation of pupils or students from one school to another" in order to achieve racial balance. The Georgia Supreme Court concluded that both the Civil Rights Act and the Fourteenth Amendment barred the implementation of the plan. Their decision was reversed by this Court:

> "The Clarke County Board of Education, as part of its affirmative duty to disestablish the dual school system, properly took into account the race of its elementary school children in drawing attendance lines. To have done otherwise would have severely hampered the board's ability to deal effectively with the task at hand. School boards that operated dual school systems are 'clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch.' *Green* v. *County School Board*, 391 US 430, 437-438, 20 L.Ed. 2d 716, 723, 88 S.Ct. 1689 (1968). In this remedial process, steps will almost invariably require that students be assigned 'differently because of their race.' See *Swann* v. *Charlotte-Mecklenberg Board of Education*, 402 US 1, 28 L.Ed. 2d 554, 91 S.Ct. 1267; *Youngblood* v. *Board of Public Instruction*, 430 F.2d 625, 630 (CA5 1970). Any other approach would freeze the status quo that is the very target of all desegregation processes."

* * *

> "Title IV clearly does not restrict state school authorities in the exercise of their discretionary powers to assign students within their school systems." (402 U.S. 41, 28 L.Ed. 2d 585.)

The Court of Appeals did not base its decision in this case on *Barresi*. Instead, it simply concluded that *Swann* v. *Charlotte-Mecklenberg*, 402 U.S. 1, 28 L.Ed. 2d 554, 91 S.Ct. 1267, requires every local school board "to both determine whether or not a dual system exists, and if so, the method to be used to eliminate the segregation" (Petition, A3). The court then found that the respondent school district had simply "adopted" the hearing examiner's determination that a dual system existed in the schools as its own "decision," as it was permitted to do after its own review of the examiner's findings. As the opinion below states, "it then followed that a remedy had to be adopted" and that "the choice of the remedy is certainly within the power of the local board to meet the constitutional mandate set out in *Brown* v. *Board of Education*, 347 U.S. 483, and the cases which followed." (Petition, A3).

The decision below emphasizes that each school board's duty to choose a remedy for segregation exists "wholly apart from what its statutory duties may be" and that "it makes no difference where the idea or the method [for the desegregation plan] may have originated because the board is carrying out its duty under the Constitution" (Petition, A3).

The Petition does not seek review of the determination by the Court of Appeals that the respondent school district properly adopted the decision of the hearing examiner that a dual system existed in its schools. The Petitioners do not contend that the decision of the Court of Appeals is in conflict with any of the desegregation cases cited in its opinion. They do not even suggest that the lower court decided

an important question of federal law which has not been, but should be, settled by this Court. Instead, they "agree that a remedy may be chosen but contend that in choosing its remedy the local board cannot exceed its state authority, unless the state restrictions upon the local Board are unconstitutional" (Petition, A8).

By failing to contest the applicability of *Brown* and its progeny to the respondent school district in the present case, petitioners have admitted the virtual irrelevance of state law in this proceeding. The questions which they present for review do not challenge the general jurisdiction of the respondent school district over the schools and pupils involved in the desegregation plan. Once such jurisdiction is established, the duty under *Brown* to uncover and remedy segregation in the school system attaches. The only test for the remedy is its effectiveness—something which is not challenged here. State law simply is not involved and those who participate as students in the state's educational system must point to some inequity of constitutional significance in the plan before its application to them can be enjoined.

II. The Court of Appeals Did Not Decide an Important Issue of Kansas Law in Conflict with Any Kansas Statute or Decision of the Kansas Supreme Court.

The remedy for segregation chosen by the respondent school district does not violate any Kansas law. The respondent school district has full authority under Article 6, Section 5, of the Kansas Constitution and K.S.A. 72-8201, *et seq.*, to assign students to the schools within its boundaries which it deems proper and appropriate. The district has authority under K.S.A. 72-8301, *et seq.*, to provide bus transportation for students to or from any school of the school district. Under the Kansas compulsory at-

tendance law, it can compel students between the ages of 7 and 16 years to attend the schools to which they are assigned. K.S.A. 72-1101, *et seq.* The respondent school district is also expressly authorized to negotiate for and expend federal funds in accordance with federal law by K.S.A. 72-6201, *et seq.*

The trial court found that the respondent school district had full authority under state law to adopt and implement the desegregation plan. The Court of Appeals, for the reasons stated above, deemed it unnecessary to examine the state law authority of the school district, although it did conclude generally that none of the issues raised by petitioners had any merit (Petition, A4).

There is no Kansas statute or case law which requires or holds that a school district must assign pupils to the schools located closest to their homes. To the contrary, school districts are authorized to provide transportation for those students who live too far from their assigned schools to walk to them.

The petitioners argue that the desegregation plan violates state law because K.S.A. 72-1106 states that a school month "shall consist of four (4) weeks of five (5) days each of six (6) hours per day on which pupils of a school are under direct supervision . . . while . . . engaged together in educational activities." Without offering any explanation for this startling contention, petitioners simply conclude that "to lengthen each school day by more than an hour, through mandating involuntary busing for certain selected children is patently an illegal practice in Kansas, no matter what social purpose it purports to serve" (Petition, p. 8).

Needless to say, petitioners cite no cases in support of their contention. On their theory, every child who rides a

bus to school in Kansas would be doing so in violation of the compulsory attendance law. The statute itself makes no reference to travel time as part of the school day. If the statute does prohibit Kansas school districts from subjecting students to "educational activities" for more than 6 hours each day, it is ridiculous to suggest that the bus ride taken by petitioners' children constitutues part of the school day as it is defined in the statute. When riding on the bus, they simply are not engaged in educational activities under the supervision of a teacher—as is required by the statute before such time can be credited toward the six-hour total necessary to comprise a school day.

Since the desegregation plan clearly does not violate any portion of the Kansas compulsory attendance law, there can be no conflict between the decision of the Court of Appeals in this case and Kansas law. The question itself is of marginal importance in the context of the undisputed duty of the respondent school district to remedy the segregation which petitioners themselves admit to have existed in the Wichita school system.

Petitioners complain that the statute relied on was not even interpreted by either of the lower courts in light of the requirements of *Brown* (Petition, p. 8). But they themselves are to blame for this because the argument itself (upon which they base their entire state law claim) is made here for the first time. As a result, the question itself is not open to review on certiorari and must be foreclosed against petitioners. *Ellis* v. *Dixon*, 75 S.Ct. 850, 349 U.S. 458, 99 L.Ed. 1231, *reh. denied*, 76 S.Ct. 37, 350 U.S. 855, 100 L.Ed. 759.

III. The Constitutional Questions Raised by Petitioners Have Recently Been Settled by This Court.

Petitioners do not challenge the effectiveness of the plan. Instead, they argue that the rights of their children under 42 U.S.C. 1981, the Kansas Constitution and the United States Constitution have been violated as the result of the implementation of the plan. They do not contend, however, that their children are being deprived of equal educational opportunities.

The Court of Appeals found that "[A]ll of the elementary students participate, and are equally subject to the plan" (Petition, A3). Petitioners do not take issue with this finding or the further observation of the court that "[T]he plan of random selection here used is not greatly different from the attendance boundary changes which often change attendance patterns in much such a random way" (Petition, A3).

Without citing any federal cases or statutes in support of their position, the petitioners argue that the addition of transportation time to each school day for their children as the result of their reassignment under the plan "effects a penal servitude" upon them and creates "an unconstitutionally privileged class" consisting of those who are not so reassigned (Petition, p. 9).

Petitioners do not afford this Court or the respondents any explanation of this bizarre contention. If the contention is based upon the Thirteenth Amendment, or any statute enacted thereunder, the decision of this Court in *Butler* v. *Perry*, 240 U.S. 328, 60 L.Ed. 672, is controlling. In *Butler* the Court held that the Thirteenth Amendment was "intended to cover those forms of compulsory labor akin to African slavery which, in practical operation, may

tend to produce like undesirable results." Petitioners do not contend that their children are subject to "compulsory labor akin to . . . slavery" when they attend or travel to a school maintained and operated by the respondent school district. Their freedom to place their children in a private school or transport them to public school themselves eliminates any possibility that the plan creates penal servitude. *Pierce* v. *Society of Sisters*, 268 U.S. 510, 69 L.Ed. 1070, 45 S.Ct. 571; *Wisconsin* v. *Yoder*, 406 U.S. 205, 32 L.Ed. 2d 15, 92 S.Ct. .....

The "extra duty" complained of by petitioners exists only by reference to the "lesser" time spent by pupils continuing to travel to their neighborhood schools. As a result, the objections presented under the Kansas Constitution and federal law really amount to nothing more than a restatement of the equal protection argument previously disposed of by this Court in *McDaniel* v. *Barresi*, *supra*.

Every school desegregation plan approved by this Court requires some pupils to attend new schools and permits other pupils to continue attending their old schools. As was stated in *Barresi*, to require otherwise would freeze the school system in the status quo and prevent the reduction and elimination of the effects of discrimination.

CONCLUSION

The decision of the Court of Appeals in this case does not conflict with any decision of any other court of appeals or of this Court.

No important issue of state law is raised in the Petition. The Petition does not reveal conflict between the constitutional duty of the respondent school district to remedy discrimination in the school system and the manner in which it is authorized by state law to provide educational opportunities for those students of school age who reside within its jurisdiction.

The Petition does not raise an issue of federal law which needs to be resolved by this Court. The effectiveness of the plan is not disputed. The reassignment of some students, but not others, is expressly sanctioned by *McDaniel* v. *Barresi, supra,* and *Swann* v. *Charlotte-Mecklenberg, supra.* Since the claims raised by petitioners under the Thirteenth and Fourteenth Amendments have already been resolved in these cases, there is no special or important reason for this Court to grant a review of this case on writ of certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Brief for Respondent School District in Opposition on all parties separately represented herein and upon the Solicitor General pursuant to Rule 33(1) of the Rules of the Supreme Court of the United States by depositing the same in a United States mail box with first class postage or air mail postage prepaid, addressed to counsel of record at the following post office addresses:

Mr. Ted K. Sharp
Suite 327 Beacon Building
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Mr. Brian K. Landsberg
Mr. Joseph D. Rich
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